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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,793	11/13/2001	Gerard Laurent Buisson	8320M	5852

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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GROUP 3700

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/010,793
Filing Date: November 13, 2001
Appellant(s): BUISSON ET AL.

Theodore P. Cummings
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 26, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(4) Status of Amendments After Final

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,742,934	Michaud et al.	5-1988
4,026,459	Blanchard	5-1977

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9 and 12-20 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on April 19, 2004.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on April 19, 2004.

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(11) Response to Argument

Regarding appellant's remarks directed to an "affidavit corroborating personal knowledge", the personal knowledge of the examiner is not at issue. The claims have been rejected based upon the prior art, the level of one of ordinary skill in the art at the time the instant invention was made, and appropriate US case law.

The patent to Michaud teaches a lid having a depending skirt (or side wall) and a plurality of inner extensions at the corners. Figure 5 is a view of the lid at a side edge thereof and figure 6 is an angled view of the lid corner. Further taught at column 3, lines 57-59, is that the tray and corresponding lid can have a triangular configuration. It would be clear to one of ordinary skill in the art that a triangular lid would have the same arrangement of inner extensions **52** at the corners.

Drawing figure 2 clearly shows at least one inner extension **52** in the corner of the lid and extending less than about 70% of the perimeter of the over cap **12**. This does not require "eye-ball observation" as asserted by appellant. Additionally, it is not necessary to point to "a measure by which one may "see" that the detents of Michaud are less than 70% of the perimeter of Michaud's lid" since it is apparent from the drawings themselves. The courts have determined that "[d]escription for the purposes of anticipation can be by drawings alone as well as by words." *In re Mraz*, 173 USPQ 25 (CCPA 1972). Thus, it is not necessary for the specification to elaborate in words what is clearly disclosed in the drawings.

Wherein the rejection set forth in the final rejection was one of obviousness and not anticipation, this dependence on the drawing figure for its teaching is appropriate for the same reasons as the decision further set forth that "claims are unpatentable when they are so broad as to read on obvious subject matter even though they likewise read on non-obvious subject matter". In the instant application, appellant has provided no reason, rationale, or evidence of

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criticality or unexpected results. One of ordinary skill in the art at the time the invention was made would have selected specific dimensions for extending the inner extension around the perimeter of the lid skirt as desired.

It is thus reaffirmed by the examiner that an affidavit corroborating personal knowledge of the examiner is not only unnecessary, but also inappropriate.

Regarding appellant's remarks directed to the rejection of claims 1-9 and 12-15 at pages 6-7 of the appeal brief filed November 26, 2004, appellant's assertion that the skirt of Michaud is not substantially continuous is unfounded. As addressed previously by the examiner, if the lid was discontinuous, it would not remain on the container. The portion of Michaud's specification appellant extracted and set forth in the last paragraph of the remarks at page 6 of the appeal brief is directed to the skirt having only inner extensions which directly underlie the rim of the container. This in no way indicates the skirt is discontinuous.

Appellant further asserts the examiner admitted the skirt is not "uniformly continuous" and that implies the patent to Michaud is not applicable. Appellant did not carefully consider the difference the examiner was making with regard to the inner extensions on the skirt. Wherein the inner extension 52 is discontinuous about the perimeter of the skirt, the skirt is not uniformly continuous. The skirt when considering the at least one extension as part of the skirt is thus substantially continuous. However, the skirt when considered without the inner extensions is substantially as well as continuously uniform.

To the same degree the instant claims set forth a "substantially continuous" skirt, the lid of Michaud teaches a substantially continuous skirt.

Appellant has provided no additional remarks regarding the patentability of claim 7. Thus, the examiner asserts for that for the same reasons set forth in the final rejection, claim 7 is not allowable over the art of record.

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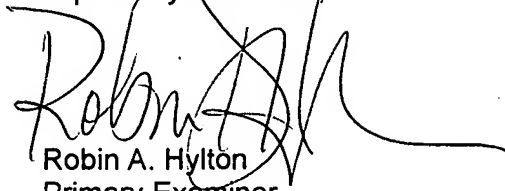
Regarding appellant's remarks directed to the rejection of claims 16-20 at pages 7-8 of the appeal brief filed November 26, 2004, it is noted that the imaginary lines used by appellant are for locating the perimetrical extension of the inner extension about the skirt. Thus, one of ordinary skill in the art at the time the invention was made would have selected any of an infinite number of lines to locate the position of the inner extension on the skirt to coincide with the desired perimetrical extension about the skirt. Whereas appellant has provided no reason, rationale, or evidence of critically or unexpected results, one of ordinary skill in the art at the time the instant invention was made would have selected two imaginary lines suitable to provide an inner extension as claimed.

Regarding appellant's remarks directed to the rejection of claims 1-9 and 12-15 at pages 6-7 of the appeal brief filed November 26, 2004, appellant merely asserts the additional patent to Blanchard does not cure the supposed defects of Michaud. Wherein the final rejection and the remarks set forth in this section of the examiner's answer clearly set forth rationale and basis in fact for maintaining an obviousness rejection, no other remarks are necessary by the examiner.

For the above reasons, it is believed that the rejections should be sustained.

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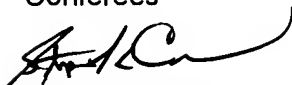
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robin A. Hylton", with a long horizontal flourish extending to the right.

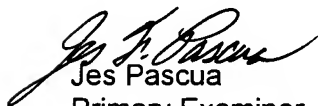
Robin A. Hylton
Primary Examiner
GAU 3727

February 3, 2005

Conferees

A handwritten signature in black ink, appearing to read "Stephen Cronin", with a long horizontal flourish extending to the right.

Stephen Cronin
Primary Examiner

A handwritten signature in black ink, appearing to read "Jes Pascua", with a long horizontal flourish extending to the right.

Jes Pascua
Primary Examiner

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